
E S P I N O S A, Judge.

¶1 John Dommissse appeals from the trial court’s dismissal of his legal malpractice claim after he failed to file an expert witness affidavit pursuant to A.R.S. § 12-2602. For the reasons stated below, we dismiss this appeal.

Factual and Procedural History

¶2 In 2007, Dommissse sued Jaburg & Wilk, P.C., and attorneys Kraig Marton, Mark Bogard, and Sheldon Lazarow for legal malpractice relating to their representation of Dommissse before the Arizona Medical Board and in related administrative and superior court hearings. In his complaint, Dommissse alleged the defendants violated “their Professional Code of Responsibility” and were “guilty of Ineffective Assistance of Counsel” for failing to meet minimum standards “established by the American Bar Association . . . , Arizona Bar Association, and Federal and State Courts.”

¶3 The defendants moved to dismiss the case on the ground Dommissse had not filed a certification pursuant to § 12-2602(A) stating whether expert testimony would be necessary. Dommissse responded by filing an untimely certification, in which he asserted no expert testimony was required. After the trial court denied the defendants’ motion to dismiss, they filed a motion pursuant to § 12-2602(D), asking the court to order Dommissse to file a preliminary expert affidavit. The court granted the motion. When Dommissse did not comply by filing the required affidavit, the defendants renewed their motion to dismiss, which the court granted without prejudice. This appeal followed.

Discussion

¶4 Dommisse challenges the trial court’s order dismissing his case without prejudice. As required by Rule 13(a)(3), Ariz. R. Civ. App. P., he has included in his opening brief a statement of our jurisdiction, asserting “this is an appeal from a final judgment from an Arizona Superior Court.” This court, however, has an independent duty to determine whether it has jurisdiction over an appeal. *See Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 8, 161 P.3d 1253, 1257 (App. 2007).

¶5 Appellate jurisdiction is limited by statute. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). “If no statute makes an order appealable, there is no jurisdiction to consider the merits of an appeal from that order.” *Id.* Section 12-2101, A.R.S., lists the instances when “[a]n appeal may be taken to the court of appeals from the superior court.” Normally, an aggrieved party may only appeal from an order of the superior court upon the entry of a “final judgment.” § 12-2101(B); *see also Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 8, 160 P.3d 223, 226 (App. 2007).

¶6 Contrary to Dommisse’s assertion, the trial court’s order dismissing his complaint is not a final judgment. *See State ex rel. Hess v. Boehringer*, 16 Ariz. 48, 51, 141 P. 126, 127 (1914); *McMurray v. Dream Catcher USA, Inc.*, No. 2 CA-CV 2007-0165, ¶ 4 (Ariz. Ct. App. Jan. 30, 2009); *L.B. Nelson Corp. v. W. Am. Fin. Corp.*, 150 Ariz. 211, 217, 722 P.2d 379, 385 (App. 1986). And Dommisse does not argue any statute of limitations bars the refiling of his claim so that the order of dismissal “in effect determine[d] the action

and prevent[ed] final judgment from which an appeal might [have] be[en] taken.” *See Boehringer*, 16 Ariz. at 51, 141 P. at 127; *see also* § 12-2101(D) (appeal may be taken from “any order affecting a substantial right made in any action when the order in effect determines the action and prevents judgment from which an appeal might be taken”). Because the order dismissing Dommissie’s complaint without prejudice is not a final judgment, we have no jurisdiction over this appeal. *See L.B. Nelson Corp.*, 150 Ariz. at 217, 722 P.2d at 385.

¶7 Appellees request attorney fees pursuant to Rule 11, Ariz. R. Civ. P., and A.R.S. § 12-349. Because we dismiss on jurisdictional grounds not raised or briefed by any of the appellees, we decline to award fees in this matter.

Disposition

¶8 The appeal is dismissed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Judge